

UNITED STATES DISTRICT COURT

for the

_____ District of _____

United States of America

v.

Case No. 1:20-mj-00083 SKO

Defendant(s)

CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date(s) of _____ in the county of _____ in the

_____ District of _____, the defendant(s) violated:

Code Section

Offense Description

This criminal complaint is based on these facts:

☐ Continued on the attached sheet.

Joseph Cook
Complainant's signature

Printed name and title

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone on:

Date: August 7, 2020

Sheila K. Oberto
Judge's signature

City and state: Fresno, California

Sheila K. Oberto, U.S. Magistrate Judge

Printed name and title

AFFIDAVIT OF JOSEPH M. COOK IN SUPPORT OF A CRIMINAL COMPLAINT

I. AFFIANT'S TRAINING AND EXPERIENCE

I, Joseph M. Cook, being duly sworn, do hereby swear or affirm:

1. I am a Special Agent with the United States Forest Service (USFS), and have been since April 2018. Prior to being a Special Agent, I was a Supervisory Law Enforcement Officer (Patrol Captain) with the US Forest Service for approximately three and a half years. Prior to being a Patrol Captain with the Forest Service, I was a Law Enforcement Officer with the U.S. Forest Service for four years. I am a graduate of the Federal Law Enforcement Training Center's Land Management Police Training Program (2010) and Criminal Investigator Training Program (2019). My primary duties include detecting, investigating, apprehending, and prosecuting criminal activity on and relating to National Forest System lands. I have the powers of a California State Peace Officer per California Penal Code section 830.8 (a) and (b).

2. I have conducted numerous controlled substance investigations and have arrested/cited many persons for being under the influence, possession, manufacturing and transportation of various controlled substances and illegal drug paraphernalia. I have investigated or participated in the investigation of numerous clandestine, outdoor marijuana cultivation sites on federal, state and private lands. The marijuana cultivation sites have been in various stages of production. I have flown marijuana reconnaissance missions with officers and agents who have attended the DEA Aerial Cannabis Observation School and have spotted marijuana gardens by air. I have also taken part in marijuana garden raid and reclamation operations, along with residential search warrants related to marijuana cultivation investigations.

3. While employed as a LEO, I attended an 80-hour Drug Enforcement Training Program course given by the USFS, which focuses specifically on marijuana cultivation activities on Forest Service Lands. I have testified in front of a Grand Jury, and written multi-jurisdictional operations plans related to marijuana cultivation investigations on public lands within the Eastern District of California.

1 4. During the course of my work, I have had the opportunity to converse with numerous
2 Law Enforcement Officers and drug enforcement officers, informants, as well as admitted and known
3 drug traffickers, including outdoor marijuana growers/traffickers, as to the methods, regarding the
4 manufacture, importation, transportation, distribution and sales of controlled substances.

5 5. I know that marijuana traffickers often cultivate marijuana on public lands and on private
6 forest lands adjacent to public lands, throughout the country, including the Eastern District of California.

7 8 9 **II. SUMMARY OF INVESTIGATION**

10 20. This investigation involves a marijuana cultivation site in the Basin Creek drainage of the
11 Stanislaus National Forest. This cultivation site is located on national forest lands, within the Stanislaus
12 National Forest, within the County of Tuolumne, State and Eastern District of California. The Basin
13 Creek cultivation site was discovered by aerial reconnaissance on June 25, 2020, when Law
14 Enforcement Officer Kris Proctor observed live marijuana plants in the area described below. On
15 August 6, 2020, I hiked into the marijuana cultivation site with Special Agent Cooper J. Fouch to locate
16 the best access into the site for a future raid of the site, to observe the size and condition of the marijuana
17 plants, and to install trail cameras in furtherance of the investigation. After making access into the
18 garden SA Fouch and I arrested, Eleno Fernandez-Garcia, in the marijuana garden.

19 **III. PURPOSE OF AFFIDAVIT AND APPLICABLE LAW**

20 21. This affidavit is made in support of an application for a criminal complaint charging
21 Eleno Fernandez-Garcia, with one count of 21 U.S.C. § 841(a)(1), manufacture of marijuana, a Schedule
22 I controlled substance; and one count of 21 U.S.C. § 846, conspiracy to manufacture, distribute and
23 possess with intent to distribute marijuana, a Schedule I controlled substance.

24 22. The facts and information set forth herein are based upon my knowledge and
25 observations, observations of other law enforcement personnel, my review of investigative reports, and
26 conversations with federal and state law enforcement officials. This affidavit is intended to show there
27 is probable cause for the criminal complaint and requested arrest warrant and does not purport to include
28

every fact known to me, rather, only those facts I believe necessary to establish probable cause. Title 21, United States Code, section 841(a) (1), states it is unlawful for any person to knowingly or intentionally manufacture, distribute, or dispense, or possess with intent to manufacture, distribute, or dispense, a controlled substance. Title 21, United States Code, section 846, states it is unlawful for any person to conspire to with another person to knowingly or intentionally manufacture, distribute, or dispense, or possess with intent to intent to manufacture, distribute or dispense, a controlled substance.

V. FACTS ESTABLISHING PROBABLE CAUSE

23. On June 25, 2020, Law Enforcement Officer Kris Proctor conducted helicopter reconnaissance of the Basin Creek area of the Stanislaus National Forest within the County of Tuolumne and State and Eastern District of California. LEO Proctor observed and photographed several plots of marijuana plants adjacent to Basin Creek, which he provided to me on that same date. I observed that the plants appeared to be marijuana and were being cultivated on the national forest.

24. On August 6, 2020, Special Agent Cooper Fouch and I conducted ground reconnaissance of the Basin Creek marijuana garden.¹ I observed a well-used foot path off Forest Road 2N36 that led to into the marijuana site. SA Fouch and I walked to the edge of the marijuana cultivation site and observed live marijuana plants in various stages of growth. I photographed these plants from the upper portion of the marijuana plot. Based on my training and experience, I recognized these plants to be marijuana based on their appearance and smell.

25. SA Fouch and I were attempting to install a trail camera, when a Hispanic male adult, later identified by consular identification as Eleno Fernandez-Garcia, entered the garden from the trail above us. I observed that Fernandez-Garcia saw me and SA Fouch and stopped walking toward us. I announced "Police" and "Policia" and to place his hands up, in Spanish. I observed Fernandez Garcia turn and run away from SA Fouch and me. SA Fouch caught up to Fernandez-Garcia and placed him in

¹ Given there were only two of us in the garden, which is located in a remote area of the forest, we ceased our investigation of the grow site and turned our attention to the arrest and processing of Fernandez-Garcia with plans to resume investigation of the grow site imminently. As such, we did not count the plants precisely during this visit.

handcuffs. SA Fouch asked Fernandez-Garcia in rudimentary Spanish how many others were in the garden and Fernandez-Garcia stated "tres."

26. I observed SA Fouch remove marijuana trimming shears from Fernandez-Garcia's waistband area. Based on my training and experience, shears are commonly used as tools to trim marijuana, and are commonly carried by individuals who work in public lands marijuana grows.

27. SA Fouch removed two Samsung smartphones from Fernandez-Garcia's pockets. I later observed that these cellphones were covered in marijuana debris.

28. As SA Fouch and I escorted Fernandez-Garcia back through the marijuana garden where we initially encountered him, I observed three additional male adults across a small drainage walking toward the marijuana garden. SA Fouch and I announced "Police" and "Policia" and observed the three male adults turn and depart the area. Based on my training and experienced, the clandestine location of the garden, the number of growers present, and the volume of marijuana plants leads me to believe that this garden was for commercial manufacturing and distribution of marijuana.

Based on the foregoing I that probable cause I submit that there is probable cause to believe Eleno Fernandez-Garcia violated Title 21, United States Code, section 841(a)(1) manufacturing, distributing and possession with the intent to distribute marijuana, a Schedule 1 controlled substance. Title 21, United States Code, section 846-Conspiracy to Manufacture, distribute and possess with intent to distribute marijuana, a schedule I controlled substance

I swear under penalty of perjury that the facts presented are true and accurate to the best of my knowledge.

Joseph Cook

Joseph M. Cook
Special Agent
United States Forest Service

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone on August 7, 2020.

Sheila K. Oberto
The Honorable Sheila K. Oberto

Approved as to Form:

/s/ Kimberly A. Sanchez
Kimberly A. Sanchez
Assistant United States Attorney